

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

KOERNER DISTRIBUTOR, INC.

Employer¹

and

Case 14-RC-12390

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 520, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Koerner Distributor, Inc., operates four distribution and warehouse facilities from which it distributes alcoholic beverages. The facilities are located in Effingham, Centralia, New Baden, and Carterville, Illinois. The Petitioner, International Union of Operating Engineers, Local 520, AFL-CIO, filed a petition and an amended petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent a unit of all full-time and regular part-time drivers, helpers, and warehouse employees employed at the Employer's Effingham, Illinois facility. A hearing officer of the Board held a hearing and the parties filed briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on three issues: (1) whether the only appropriate unit is a multi-facility unit which includes the Effingham, New Baden, and Centralia facilities; (2) whether a part-time student employed at the Effingham facility should be included in the unit; and (3) whether Section 9(c)(5) of the Act requires dismissal of this petition.

¹ The Employer's name appears as amended at the hearing.

The Employer contends that the only appropriate unit is a multi-facility unit consisting of the Effingham, Centralia, and New Baden facilities or, at least, the Effingham and Centralia facilities. The Union contends that the petitioned-for unit is appropriate and the Union will not proceed to an election in any other unit. Contrary to the Employer, the Union also contends that the part-time student should be excluded from the unit as a casual employee. The Employer also contends that the petitioned-for unit is based on the extent of organization and, therefore, the unit is inappropriate pursuant to Section 9(c)(5) of the Act.

I have considered the evidence and arguments presented by the parties on the multi-facility issue, and I find that the only appropriate unit must include, at least, the Effingham and Centralia facilities. As the Union has declined to proceed to an election in this unit, I must dismiss the petition. Accordingly, the other issues raised by the parties are moot, and I make no findings concerning the inclusion of the New Baden facility or the part-time student or the applicability of Section 9(c)(5).

To provide a context for my discussion of the multi-facility issue, I will first provide an overview of the Employer's operations. Then I will present in detail the facts and reasoning that supports my conclusion.

I. OVERVIEW OF OPERATIONS

The headquarters of the Employer's operations is located at its Effingham facility. From this central location, the Employer operates the three facilities at issue in this case, as well as the Carterville facility. The Carterville facility is not at issue as the Carterville employees have historically been represented by the Teamsters, and the Employer recognized that incumbent union when the Employer purchased the facility in 1998.

In about 1982, the Employer began its operations by purchasing the Effingham facility. In 1986, the Employer purchased the Centralia and New Baden facilities. The

Employer controls the labor relations for all three facilities from Effingham. All of the Employer's upper managerial personnel work out of the Effingham facility.

Each of the three facilities warehouses and distributes beer, wine, and spirits to customers in counties closest to that warehouse. Effingham is the Employer's largest facility, delivering to customers in about 20 Illinois counties and employing about 24 full-time and part-time driver and warehouse employees. The Centralia facility is about 55 miles from Effingham. Centralia delivers products to customers in about 10 Illinois counties and employs about 10 employees. The Employer's New Baden facility is about 45 miles from the Centralia facility. New Baden delivers products to customers in eight Illinois counties and employs about eight employees. There is some overlap between the areas which the three facilities serve.

The Employer is in the process of consolidating its Effingham and Centralia facilities. To accomplish this consolidation, the Employer is doubling the square footage of its Effingham warehouse by adding 50,000 square feet of refrigerated warehouse. Once this addition is complete, the Employer will close its Centralia facility and transfer all employees and routes to Effingham. The Effingham City Council and the Planning Commission have approved the plans for this addition and the financing has been arranged. At the time of the hearing, the Employer anticipated beginning the bidding process for the addition within about 2 weeks. The Employer hopes to have the addition completed by the first few months of 2003. The Employer announced the closing and consolidation of the facilities to all its employees in about March 2002. It also announced that all of Centralia's employees will be offered employment at the Effingham facility. In preparation for the closing of this facility, the Employer has stopped hiring at its Centralia facility. On August 1, 2002, one of Centralia's drivers resigned. The Employer did not replace that driver, but instead transferred some Centralia routes to

Effingham. In addition, when New Baden acquired a new product line, the Employer transferred a Centralia employee to New Baden.

II. THE ISSUES TO CONSIDER IN A MULTI-FACILITY SETTING

The general rule is that a single-plant unit is presumptively appropriate unless the employees at the facilities have been so integrated with the employees in the other plants so as to cause their single-plant unit to lose its separate identity. The relevant factors to consider are: (1) centralization of management and supervision, particularly in regard to labor relations; (2) extent of functional integration of operations; (3) extent of interchange of employees; (4) work contacts among employees at the three plants; (5) physical and geographical location in relation to each other; (6) differences in the products, or skills, or types of work required; and (7) past bargaining history. *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *Alma Plastics Co.*, 265 NLRB 479 (1982); *Beaverite Products, Inc.*, 229 NLRB 369 (1977). Because there is no bargaining history at any of these locations, further analysis of that factor is unnecessary and the analysis below discusses the remaining relevant factors.

III. DISCUSSION OF THE RELEVANT FACTORS

1. Centralization of Management and Supervision

The record establishes central control of labor relations emanating from headquarters at Effingham. The managerial hierarchy at Effingham consists of President Paul R. Koerner, Executive Vice President Carl Phil Koerner III, Vice President, Chief Financial Officer, and Human Resources Director Larry O'Dell, Management Information Systems Officer Bernie Blanchette, Development Officer Cliff Turner, and Warehouse Manager Tom Wolters. General Sales Manager of the Metro East Market Area Mike Koeneman is New Baden's only supervisor, and Terry Sledge is the only supervisor at Centralia.

The Employer's President Paul Koerner (P. Koerner) has overall responsibility for the Employer's operations. Larry O'Dell reports directly to P. Koerner. O'Dell has responsibility for human resource matters at all three facilities. All decisions affecting terms and conditions of employment for employees at the three facilities, such as whether to hire, fire, promote, demote, transfer, or discipline employees, are made by a team which consists of P. Koerner, O'Dell, and the local supervisor. Effingham's Tom Wolters, Centralia's Terry Sledge, and New Baden's Mike Koeneman are the local supervisors who work with P. Koerner and O'Dell in making such decisions. P. Koerner has final authority regarding all such decisions.

Labor policies are established and controlled by the central management at the Effingham facility. Decisions regarding wages and benefits are all made by management at the Effingham facility. Employees at all three facilities are paid the same wage rates. At the same time each year, employees at the three facilities all receive wage increases in the same amounts, depending on their job classification. Benefits, including vacation, pension, health insurance, life insurance, sick days, and holidays, are the same for all three locations. In June 2001, the Employer issued a single personnel policy manual applicable to all three facilities. The personnel manual contains policies regarding, inter alia, code of conduct, attendance, appearance, overtime, leave of absence, jury duty, funeral leave, sexual harassment, and substance abuse. The personnel files for employees at all three locations are physically maintained in Effingham. All time and payroll records are maintained in Effingham. Payroll for the three facilities is prepared in Effingham. Interviews for hiring in New Baden are conducted both at New Baden and Effingham. There is no further hiring taking place at Centralia, but Centralia interviews had been conducted both at Centralia and Effingham.

2. Functional Integration of Operations

The three facilities are functionally integrated. All orders for merchandise for the three locations come into, and are processed through, the Effingham facility. The Employer's centralized computer system is in its Effingham facility. Approximately five computer operators work at the Effingham facility. These operators receive all customer orders for merchandise and generate invoices for these orders.

All merchandise is purchased through Effingham and delivered to the Effingham facility. Effingham processes and packs the orders for all three locations and disburses the products to Centralia and New Baden. Thus, each night two trucks are loaded in Effingham, one with products for Centralia, and one for New Baden. When the trucks arrive in Centralia and New Baden, they are unloaded and then loaded with excess goods to be transferred back to Effingham. Similarly, all equipment is purchased through Effingham, and the three locations exchange equipment when necessary.

3. Extent of Interchange of the Employees

Although employees at all three locations have historically been provided verbal and/or written notice of any openings at other locations, the evidence of interchange is limited to the single transfer of one driver from Centralia to New Baden cited above. However, it is undisputed that the Employer soon will be consolidating its Centralia operation with the Effingham operation and transferring the Centralia employees to Effingham. At that time, the Effingham and Centralia employees will be fully integrated. At present, however, the consolidation has been limited to the movement of several routes from Centralia to Effingham as cited above.

4. Work Contacts Among Employees

The record has limited evidence of work contacts among employees at the three plants. Each night, one driver travels between Effingham and Centralia and another between Effingham and New Baden transferring the product between facilities.

However, in light of general testimony that the Centralia and New Baden employees leave work at 5 p.m., it is not clear what contact the New Baden and Centralia employees have with the Effingham drivers. There is also evidence in the record that in order to coordinate the transfer of products between the facilities and loading of product, employees at the three locations talk to one another on a daily basis. However, it is not clear to what extent these conversations occur between unit employees, as opposed to excluded office employees, at the three locations. As noted above, however, once the planned consolidation is complete, the Centralia and Effingham operations and employees will be fully integrated.

5. The Physical and Geographical Location in Relation to Each Other

The facilities are a good distance apart. Centralia and Effingham are 55 miles apart, and Centralia and New Baden are another 45 miles apart. As noted above, however, once the planned consolidation is complete, the Centralia and Effingham operations and employees will be fully integrated.

6. The Differences in Skills or Types of Work Required

The employees at the three facilities perform essentially the same type of work requiring the same type of skills, training, and equipment. All three locations distribute the same type of products to similar customers. All three locations use common job descriptions. The warehouse employees at all three locations perform the same work and use the same equipment. The skills and training necessary to perform warehouse work at the three locations is the same. Warehouse employees at all locations must be certified to operate a tow motor.

The drivers at the three facilities perform basically the same work, delivering alcoholic beverages to customers on set routes. The skills, training, and licensing requirement for Centralia and Effingham drivers are exactly the same. Drivers at both locations drive 16 and 18 bay trucks and are required to have a commercial driver's

license. The drivers at the New Baden facility drive box bed trucks and, therefore, are only required to have a lower class of commercial driver's license. Nevertheless, the skills and training necessary for the New Baden drivers to perform their work is similar to that required of the Centralia and Effingham drivers.

IV. ANALYSIS

The facts above, and the record as a whole, establish that the employees at the Effingham facility do not have a community of interest sufficiently distinct from that of employees at the Centralia facility so as to warrant the establishment of a separate unit as requested by the Petitioner. The operations of the three facilities are functionally integrated; the operations of the Centralia and New Baden facilities are completely dependent on the Effingham facility. The central management at Effingham controls the labor relations policy for all three facilities and are intimately involved in personnel actions for all of the facilities including hiring, discharge, and discipline. Employees at all three facilities are subject to the same personnel policies, enjoy the same wages and benefits, and perform the same work utilizing similar skills and equipment. Although the record is devoid of any evidence of significant interchange and the extent of contact is, regrettably, unclear, this lack of interchange and contact is outweighed by the impending consolidation of the Centralia and Effingham operations. All Centralia employees know that if they want to keep their jobs, they will eventually have to transfer to the Effingham facility. Although the consolidation is a future event, the impact is current. No new employees are being hired at Centralia; a Centralia driver was transferred to New Baden; and, upon the resignation of a Centralia driver, work was transferred to Effingham. In these circumstances, the current day-to-day interests of the Centralia employees have been effectively merged with those of the employees at Effingham. See *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980); *Haag Drug Company, Incorporated*, 169 NLRB 877 (1968)

The Petitioner argues in its brief that the consolidation appears speculative because the exact date is undetermined and dependent, in part, upon factors beyond the Employer's control, specifically the vagaries of the bidding process, the construction process, and the weather. The Petitioner does concede, however, that the consolidation will take place. The Board has held that in determining the appropriate unit in multi-facility settings, an employer's future plans should be considered. See *Noranda Aluminum, Inc.*, 186 NLRB 217 (1970). In these circumstances, the impact of the consolidation cannot simply be discounted.

In its brief, Petitioner also contends that the consolidation is akin to an "expanding unit," and that an election is appropriate among the current Effingham employees because those employees represent a "substantial and representative" complement of the eventual consolidated workforce. Petitioner cites *Toto Industries (Atlanta), Inc.*, 323 NLRB 645 (1997) and *Custom Deliveries*, 315 NLRB 1018 (1994) in support of this proposition. However, those cases and other "expanding unit" cases are not apposite. In the expanding unit cases, the identity of future employees are unknown and to safeguard their franchise, an election would have to be postponed until their hire, which would deprive current employees of their right to representation. A balance of their respective interests is achieved by the "substantial and representative complement" doctrine. However, in this case, the identities of the Centralia employees are known, their interests merged, and an election need not be postponed until some future event, (but for Petitioner's decision not to proceed to an election in any unit other than that petitioned for).

In view of the above evidence and the record as a whole, I find that the only appropriate unit must include at least the employees at Centralia as well as the Effingham employees encompassed by the petitioned-for unit. *Alma Plastics Co.*, supra; *Beaverite Products, Inc.*, supra; *Noranda Aluminum, Inc.*, supra. As the Petitioner has

declined to proceed to an election in a unit including any facility other than Effingham, I find it unnecessary to decide whether the New Baden employees should also be included in this unit, and I shall dismiss this petition.

CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed;
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes and policies of the Act to assert jurisdiction in this case;²
3. The Petitioner claims to represent certain employees of the Employer; and
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated above.

ORDER

IT IS HEREBY ORDERED that the petition filed herein is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-

² The Employer, Koerner Distributor, Inc., an Illinois corporation, with its principal offices located at 1305 West Wabash, Effingham, Illinois, and with warehouse and distribution facilities located at Centralia, Effingham, and New Baden, Illinois, is engaged in the warehousing and distribution of alcoholic beverages. During the past 12 months, which period is representative of the Employer's operations, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to its Centralia and Effingham, and/or New Baden, Illinois facilities from points located outside the State of Illinois.

0001. This request must be received by the Board in Washington by **November 7, 2002.**

Dated October 24, 2002

at St. Louis, Missouri

Karen L. Rengstorf, Acting Regional Director
National Labor Relations Board
Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63103-2829

440-3325-0000-0000